

in the year in which such unused foreign tax arose, then the portion of such consolidated unused foreign tax attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-79A(a)(1) and (2), as appropriate) and shall be deemed paid or accrued in such separate return year to the extent provided in section 904(d).

(2) *Portion of consolidated unused foreign tax attributable to a member.* The portion of a consolidated unused foreign tax for any year attributable to a member of a group is an amount equal to such consolidated unused foreign tax multiplied by a fraction, the numerator of which is the foreign taxes paid or accrued for such year (including those taxes deemed paid or accrued, other than by reason of section 904(d)) to each foreign country or possession (or to all foreign countries or possessions if the overall limitation is effective) by such member, and the denominator of which is the aggregate of all such taxes paid or accrued for such year (including those taxes deemed paid or accrued, other than by reason of section 904(d)) to each such foreign country or possession (or to all foreign countries or possessions if the overall limitation is effective) by all the members of the group.

(e) *Carryover of consolidated excess charitable contributions to separate return years—*(1) *In general.* If the consolidated excess charitable contributions for any taxable year can be carried under the principles of section 170(b)(2) and paragraph (b) of § 1.1502-24 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such excess contributions arose, then the portion of such consolidated excess charitable contributions attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-

79A(a)(1) and (2), as appropriate) and shall be a charitable contribution carryover to such separate return year.

(2) *Portion of consolidated excess charitable contributions attributable to a member.* The portion of the consolidated excess charitable contributions attributable to a member of a group is an amount equal to such consolidated excess contributions multiplied by a fraction, the numerator of which is the charitable contributions paid by such member for the taxable year, and the denominator of which is the aggregate of all such charitable contributions paid for such year by all the members of the group.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8294, 55 FR 9438, Mar. 14, 1990; T.D. 8319, 55 FR 49038, Nov. 26, 1990; T.D. 8364, 56 FR 47402, Sept. 19, 1991; T.D. 8597, 60 FR 36710, July 18, 1995; T.D. 8677, 61 FR 33324, 33325, 33334, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999]

§ 1.1502-80 Applicability of other provisions of law.

(a) *In general—*(1) *Application of other provisions.* The Internal Revenue Code (Code), or other law, shall be applicable to the group to the extent the regulations do not exclude its application. To the extent not excluded, other rules operate in addition to, and may be modified by, these regulations. Thus, for example, in a transaction to which section 381(a) applies, the acquiring corporation will succeed to the tax attributes described in section 381(c). Furthermore, sections 269 and 482 apply for any consolidated return year. However, in a recognition transaction otherwise subject to section 1001, for example, the rules of section 1001 continue to apply, but may be modified by the intercompany transaction regulations under § 1.1502-13.

(2) *No duplicative adjustments.* Nothing in these regulations shall be interpreted or applied to require an adjustment, inclusion, or other item to the extent it would have the effect of duplicating any other adjustment, inclusion, or other item required under the Code or other rule of law, including other provisions of these regulations.

(3) *Application of single-entity principles.* If two or more adjustments, inclusions, or other items are subject to

paragraph (a)(2) of this section, the determination of which adjustment, inclusion, or other item is treated as applied or taken into account is made by taking into account the purposes of the provisions and applying single-entity principles as appropriate.

(4) *Effective/applicability dates.* This paragraph (a) is applicable with respect to transactions and determinations on or after September 17, 2008.

(b) *Non-applicability of section 304.* Section 304 does not apply to any acquisition of stock of a corporation in an intercompany transaction or to any intercompany item from such transaction occurring on or after July 24, 1991.

(c) *Deferral of section 165—(1) General rule.* Subsidiary stock is not treated as worthless under section 165 until immediately before the earlier of the time—

(i) The stock is worthless within the meaning of §1.1502-19(c)(1)(iii); or

(ii) The subsidiary for any reason ceases to be a member of the group.

(2) *Cross reference.* See §1.1502-36 for additional rules relating to worthlessness of subsidiary stock on or after September 17, 2008.

(3) *Effective/applicability date.* This paragraph (c) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007. However, taxpayers may apply this paragraph (c) to taxable years beginning on or after January 1, 1995.

(d) *Non-applicability of section 357(c)—(1) In general.* Section 357(c) does not apply to any transaction to which §1.1502-13, §1.1502-13T, §1.1502-14, or §1.1502-14T applies, if it occurs in a consolidated return year beginning on or after January 1, 1995. For example, P, S, and T are members of a consolidated group, P owns all of the stock of S and T with bases of \$30 and \$20, respectively, S has a \$30 basis in its assets and \$40 of liabilities, and S merges into T in a transaction described in section 368(a)(1)(A) (and in section 368(a)(1)(D)); section 357(c) does not apply to the merger, P's basis in T's stock increases to \$50 (\$30 plus \$20), and T succeeds to S's \$30 basis in the assets transferred subject to the \$40 liability. Similarly, if S instead transferred its

assets and liabilities to a newly formed subsidiary in a transaction to which section 351 applies, section 357(c) does not apply and S's basis in the subsidiary's stock is a \$10 excess loss account. This paragraph (d) does not apply to a transaction if the transferor or transferee becomes a nonmember as part of the same plan or arrangement. The transferor (or transferee) is treated as becoming a nonmember once it is no longer a member of a consolidated group that includes the transferee (or transferor). For purposes of this paragraph (d), any reference to a transferor or transferee includes, as the context may require, a reference to a successor or predecessor.

(2) *Prior period transactions.* If, in a tax year beginning before January 1, 1995, a member's stock with an excess loss account is transferred in a transaction to which §1.1502-13, §1.1502-13T, §1.1502-14, or §1.1502-14T applies, paragraph (d)(1) of this section applies to the stock transfer to the extent that the income, gain, deduction, or loss (if any) is not taken into account in a tax year beginning before January 1, 1995. For example, if P, S, and T, are members of a consolidated group, T's stock has an excess loss account, and P transfers the T stock to S in 1993 in a transaction to which section 351 and §1.1502-13 apply, section 357(c) applies to the transfer only to the extent P's gain is taken into account in tax years beginning before January 1, 1995.

(e) *Non-applicability of section 163(e)(5).* Section 163(e)(5) does not apply to any intercompany obligation (within the meaning of §1.1502-13(g)) issued in a consolidated return year beginning on or after July 12, 1995.

(f) *Non-applicability of section 1031.* Section 1031 does not apply to any intercompany transaction occurring in consolidated return years beginning on or after July 12, 1995.

(g) *Special rules for liquidations to which section 332 applies.* Notwithstanding the general rule of section 381, if multiple members (distributee members) acquire assets of a corporation in a liquidation to which section 332 applies (regardless of whether any single member owns stock in the liquidating corporation meeting the requirements of section 1504(a)(2)), such members

succeed to and take into account the items of the liquidating corporation (including items described in section 381(c), but excluding intercompany items under §1.1502-13) as provided in this paragraph (g) to the extent not otherwise prohibited by any applicable provision of law. This paragraph (g) does not apply to the intercompany items of the liquidating corporation. See §1.1502-13(j)(2)(ii).

(1) *Income offset items and deferred income.* Except as otherwise provided in this paragraph (g)(1), each distributee member succeeds to and takes into account the items of the liquidating corporation that could be used to offset the income of the group or any member (including deferred deductions, net operating loss carryovers, and capital loss carryovers) (income offset items) to the extent that such items would have been reflected in investment adjustments to the stock of the liquidating corporation owned by such distributee member under §1.1502-32(c) if, immediately prior to the liquidation, any stock of the liquidating corporation owned by nonmembers had been redeemed and then such items had been taken into account. However, each distributee member succeeds to the full amount of any deferred deduction or deferred income item attributable to the particular property or business operations distributed to such distributee in the liquidation to the extent that such item is not taken into account in the determination of the income or loss of the liquidating corporation with regard to the liquidation under chapter 1 of the Internal Revenue Code (Code). If the liquidating corporation is not a member of the group at the time of the liquidation, the rules of this paragraph (g)(1) are applied as if the liquidating corporation had been a member of the group.

(2) *Accounting for deferred income items.* Solely for the purpose of determining whether deferred income items of a liquidating corporation are taken into account under applicable principles of law as a result of a liquidation to which section 332 applies, the transfer of property to, and the assumption of liabilities by, a distributee member that does not own stock in the liquidating corporation meeting the re-

quirements of section 1504(a)(2) without regard to the application of §1.1502-34 immediately prior to the liquidation is not treated as part of a transaction to which section 381(a) applies. In addition, section 332(a) does not apply in determining the recognition or non-recognition of any income realized by the distributee member under applicable principles of law on account of consideration received (or deemed received) on the assumption of the liquidating corporation's obligation or liability attributable to any deferred income item.

(3) *Credits and earnings and profits.* Each distributee member succeeds to and takes into account a percentage of each credit of the liquidating corporation equal to the value of the stock of the liquidating corporation owned by such distributee at the time of the liquidation divided by the total value of all the stock of the liquidating corporation owned by members of the group at the time of the liquidation. Except to the extent that the distributee member's earnings and profits already reflect the liquidating corporation's earnings and profits, each distributee member succeeds to and takes into account under the principles of §1.1502-32(c) the earnings and profits, or deficit in earnings and profits, of the liquidating corporation (determined after taking into account the amount of earnings and profits properly applicable to distributions to non-member shareholders under §1.381(c)(2)-1(c)(2)). If the liquidating corporation is not a member of the group at the time of the liquidation, the rules of this paragraph (g)(3) are applied as if the liquidating corporation had been a member of the group.

(4) *Other items.* With regard to items to which neither paragraph (g)(1) nor (g)(3) of this section applies, a distributee member that, immediately prior to the liquidation, owns stock in the liquidating corporation meeting the requirements of section 1504(a)(2) without regard to the application of §1.1502-34 succeeds to the items of the liquidating corporation in accordance with section 381 and other applicable principles. A distributee member that, immediately prior to the liquidation, does not own stock in the liquidating

corporation meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502-34 succeeds to the items of the liquidating corporation to the extent that it would have succeeded to those items if it had purchased, in a taxable transaction, the assets or businesses of the liquidating corporation that it received in the liquidation and had assumed the liabilities that it assumed in the liquidation.

(5) *Determination of the items of a liquidating subsidiary.* For purposes of this section, the items of a liquidating subsidiary include the amount of any consolidated tax attribute attributable to the liquidating subsidiary that is determined pursuant to the principles of § 1.1502-21(b)(2)(iv). In addition, if the liquidating subsidiary is a member of a separate return limitation year subgroup, the amount of a tax attribute that arose in a separate return limitation year that is attributable to that member shall also be determined pursuant to the principles of § 1.1502-21(b)(2)(iv).

(6) *Examples.* The following examples illustrate the application of this paragraph (g):

Example 1. Liquidation—80 percent distributee. (i) *Facts.* X has only common stock outstanding. On January 1 of year 1, X acquired equipment with a 10-year recovery period and elected to depreciate the equipment using the straight-line method of depreciation. On January 1 of year 7, M1 and M2 own 80 percent and 20 percent, respectively, of X's stock. X is a domestic corporation but is not a member of the group that includes M1 and M2. On that date, X distributes all of its assets to M1 and M2 in complete liquidation. The equipment is distributed to M1. Under section 334(b), M1's basis in the equipment is the same as it would be in X's hands. After computing its tax liability for the taxable year that includes the liquidation, X has net operating losses of \$100, business credits of \$40, and earnings and profits of \$80.

(ii) *Succession to items described in section 381(c).* (A) *Losses.* Under paragraph (g)(1) of this section, each distributee member succeeds to X's items that could be used to offset the income of the group or any member to the extent that such items would have been reflected in investment adjustments to the stock of X it owned under § 1.1502-32(c) if, immediately prior to the liquidation, such items had been taken into account. Accordingly, M1 and M2 succeed to \$80 and \$20, respectively, of X's net operating loss.

(B) *Credits and earnings and profits.* Under paragraph (g)(3) of this section, because, immediately prior to the liquidation, M1 and M2 hold 80 percent and 20 percent, respectively, of the value of the stock of X, M1 and M2 succeed to \$32 and \$8, respectively, of X's \$40 of business credits. In addition, because M1's and M2's earnings and profits do not reflect X's earnings and profits, X's earnings and profits are allocated to M1 and M2 under the principles of § 1.1502-32(c). Therefore, M1 and M2 succeed to \$64 and \$16, respectively, of X's earnings and profits.

(C) *Depreciation of equipment's basis.* Under paragraph (g)(4) of this section, because M1 owns stock in X meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502-34, M1 is required to continue to depreciate the equipment using the straight-line method of depreciation over the remaining recovery period of 4.5 years (assuming X used a half-year convention).

Example 2. Liquidation—no 80 percent distributee. (i) *Facts.* The facts are the same as in *Example 1* except that M1 and M2 own 60 percent and 40 percent, respectively, of X's stock. In addition, on January 1 of year 6, X entered into a long-term contract with Y, an unrelated party. The total contract price is \$1000, and X estimates the total allocable contract costs to be \$500. At the time of the liquidation, X had received \$250 in progress payments under the contract and incurred costs of \$125. X accounted for the contract under the percentage of completion method described in section 460(b). In the liquidation, M1 assumes X's contract obligations and rights.

(ii) *Succession to items described in section 381(c).* (A) *Losses.* Under paragraph (g)(1) of this section, each distributee member succeeds to X's items that could be used to offset the income of the group or any member to the extent that such items would have been reflected in investment adjustments to the stock of X it owned under § 1.1502-32(c) if, immediately prior to the liquidation, such items had been taken into account. Accordingly, M1 and M2 succeed to \$60 and \$40, respectively, of X's net operating loss.

(B) *Credits and earnings and profits.* Under paragraph (g)(3) of this section, because, immediately prior to the liquidation, M1 and M2 hold 60 percent and 40 percent, respectively, of the value of the stock of X, M1 and M2 succeed to \$24 and \$16, respectively, of X's \$40 of business credits. In addition, because M1's and M2's earnings and profits do not reflect X's earnings and profits, X's earnings and profits are allocated to M1 and M2 under the principles of § 1.1502-32(c). Therefore, M1 and M2 succeed to \$48 and \$32, respectively, of X's earnings and profits.

(C) *Depreciation of equipment's basis.* Under section 334(a), M1's basis in the equipment is its fair market value at the time of the distribution. Pursuant to section 168(i)(7), to

the extent that M1's basis in the equipment does not exceed X's adjusted basis in the equipment at the time of the transfer, M1 is required to continue to depreciate the equipment using the straight-line method of depreciation over the remaining recovery period of 4.5 years (assuming X used a half-year convention). Any portion of M1's basis in the equipment that exceeds X's adjusted basis in the equipment at the time of the transfer is treated as being placed in service by M1 in the year of the transfer. Thus, M1 may choose any applicable depreciation method, recovery period, and convention under section 168 for such excess basis.

(D) *Method of accounting for long-term contract.* Under paragraph (g)(4) of this section, M1 does not succeed to X's method of accounting for the contract. Rather, under § 1.460-4(k)(2), M1 is treated as having entered into a new contract on the date of the liquidation. Under § 1.460-4(k)(2)(iii), M1 must evaluate whether the new contract should be classified as a long-term contract within the meaning of § 1.460-1(b) and account for the contract under a permissible method of accounting.

Example 3. Liquidation—deferred items. (i) *Facts.* X has only common stock outstanding, and M1 and M2 (who are members of the same group) own 80 percent and 20 percent, respectively, of X's stock. X operates two divisions, each of which defers prepaid subscription income pursuant to an election under section 455. X distributes all of its assets in complete liquidation. M1 receives all of the assets of Division 1, including prepaid subscription income, and assumes X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income received by M1 relates. M2 receives all of the assets of Division 2, including prepaid subscription income, and assumes X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income received by M2 relates.

(ii) *Acceleration of deferred income items and succession to other deferred items.* Under paragraph (g)(1) of this section, M1 succeeds to the full amount of the deferred prepaid subscription income of X attributable to Division 1. Under applicable law, X does not recognize the deferred prepaid subscription income attributable to Division 1 because X's liability to furnish or deliver the newspaper, magazine, or other periodical ends as a result of a transaction to which section 381(a) applies. Under paragraph (g)(2) of this section, solely for purposes of determining whether the deferred income items of X attributable to Division 2 are taken into account as a result of the liquidation, the distribution of property to M2 is not treated as a transaction to which section 381(a) applies. Therefore, under applicable law, X's deferred prepaid subscription income attributable to

Division 2 is taken into account in the determination of X's income or loss with regard to the liquidation. Further, under paragraph (g)(2) of this section, section 332(a) does not apply in determining the recognition or non-recognition of any income that M2 realizes on account of consideration received (or deemed received) on its assumption of X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income relates.

(7) *Effective/applicability date.* This paragraph (g) applies to transactions occurring after April 14, 2008.

(h) *Non-applicability of section 362(e)(2)—(1) General rule.* Section 362(e)(2) does not apply to any inter-company transaction occurring on or after September 17, 2008. Taxpayers may apply this paragraph (h) to inter-company transactions occurring on or after October 22, 2004, and in such case, any election made under section 362(e)(2)(C) will have no effect. The purpose of this paragraph (h) is to facilitate the application of the consolidated return provisions addressing the duplication of loss between members of a consolidated group.

(2) *Anti-abuse rule—(i) General rule.* If a taxpayer engages in a transaction to which section 362(e)(2) would apply but for the application of paragraph (h)(1) of this section, and acts with a view to prevent the consolidated return provisions from properly addressing loss duplication, appropriate adjustments will be made to clearly reflect the income of the group.

(ii) *Example.* The following example illustrates the principle of the anti-abuse rule in this paragraph (h)(2).

Example. (A) *Facts.* P, the common parent of a consolidated group, owns the four outstanding shares of S stock (Share 1 through Share 4) with an aggregate basis of \$0 and value of \$80. S owns Asset 1 with a basis of \$0 and a value of \$80. With a view to prevent the consolidated return provisions from addressing the duplication of loss, P transfers Asset 2 with a basis of \$100 and a value of \$20 to S in exchange for an additional share of S stock (Share 5) in a transaction to which section 351 applies. P later sells Share 5 to X, an unrelated person, for \$20 at a time when S's basis in Asset 2 was still \$100. The sale is a transfer of a loss share and therefore subject to § 1.1502-36.

(B) *Analysis.* Although the sale would be subject to § 1.1502-36, that section would not prevent the stock loss or reduce S's attributes (to prevent duplication of the stock

loss) because neither §1.1502-36(b) nor §1.1502-36(c) would adjust the basis of the transferred share (because there are no investment adjustments) and §1.1502-36(d) would not reduce S's attributes (because S's aggregate inside loss is \$0). However, because P acted with a view to prevent the consolidated return provisions from addressing the duplication of the loss on Asset 2, P's transfer of Asset 2 to S is subject to the anti-abuse rule in this paragraph (h)(2). Accordingly, effective immediately before the transfer of Share 5 to X, either P's basis in Share 5 or S's basis in Asset 2 must be adjusted to reflect what it would have been had section 362(e)(2) been applied at the time P transferred Asset 2 to S (taking into account the interim facts and circumstances). Accordingly, S must either reduce its basis in Asset 2 by \$80 to \$20 (eliminating the duplicated loss) or P must reduce its basis in Share 5 by \$80 to \$20 (eliminating the duplicated loss).

(C) *Transfer of all S shares.* Assume the same facts as those in paragraph (A) of this *Example*, except that P sells all five S shares to X. Although P's transfer of Asset 2 to S results in the duplication of an \$80 loss, because all the shares are transferred, the transaction does not prevent the consolidated return provisions from properly addressing loss duplication. P's \$80 duplicated loss is offset by an \$80 duplicated gain, and the group recognizes the offsetting stock gain and loss. Accordingly, this paragraph (h)(2) does not apply to P's transfer of Asset 2 to S.

[T.D. 8402, 57 FR 9385, Mar. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.1502-80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.1502-81T Alaska Native Corporations.

(a) *General Rule.* The application of section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 (relating to Native Corporations established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)) is limited to the use on a consolidated return of losses and credits of a Native Corporation, and of a corporation all of whose stock is owned directly by a Native Corporation, during any taxable year (beginning after the effective date of such sections and before 1992), or any part thereof, against the income and tax liability of a corporation affiliated with the Native Corporation. Thus, no other

tax saving, tax benefit, or tax loss is intended to result from the application of section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 to any person (whether or not such person is a member of an affiliated group of which a Native Corporation is the common parent). In particular, except as approved by the Secretary, no positive adjustment under §1.1502-32(b) will be made with respect to the basis of stock of a corporation that is affiliated with a Native Corporation through application of section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986.

(b) *Effective Dates.* This section applies to taxable years beginning after December 31, 1984.

[T.D. 8130, 52 FR 8448, Mar. 18, 1987, as amended by T.D. 8560, 59 FR 41675, Aug. 15, 1994]

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